



DEPARTMENT OF THE NAVY
NAVAL AIR SYSTEMS COMMAND
WASHINGTON, D.C. 20361

IN REPLY REFER TO
NAVAIRINST 5870.4
AIR-OOP
27 Oct 1980

NAVAIR INSTRUCTION 5870.4

From: Commander, Naval Air Systems Command

To : Deputy Commanders, Assistant Commanders, Comptroller, Command Special Assistants, Designated Project Managers, Project Coordinators, and Office and Division Directors

Subj: Security review of patent applications

Ref : (a) 35 USC 181 (NOTAL)
(b) DoD Directive 5535.2 (NOTAL)
(c) OPNAVINST 5510.1F

1. Purpose. To assign responsibilities and promulgate instructions concerning security review of patent applications containing information as to matters under the cognizance of the Naval Air Systems Command (NAVAIR).

2. Definitions

a. Official Information. Information which is owned by, produced for or by, or is subject to the control of the United States Government.

b. Secrecy Order. An order issued by the Commissioner of Patents which prohibits, except with the written consent of the Commissioner, the publication or disclosure of an invention disclosed in the patent application to which the order applies, or of any material information with respect thereto, in any way to any person not cognizant of the invention prior to the date of the order.

3. Background

a. Reference (a) authorizes the Commissioner of Patents to place a secrecy order on any patent application filed in the U.S. Patent Office when a notification is received from the Secretary of Defense that the disclosure of the invention through the issuance of a patent would be detrimental to the national security. The authority and responsibilities of the Secretary of Defense under reference (a) have been delegated to the Secretaries of the Military Departments by reference (b) and redelegated within the Navy, to the Chief of Naval Research (Code 300), the Patent Counsel for the Navy by reference (c). The Secretaries of the Military Departments jointly organized the Armed Services Patent Advisory Board (ASPAB) to implement reference (a) within the Department of Defense. The Patent Counsel, NAVAIR, has been appointed to the ASPAB by the Patent Counsel for the Navy to implement reference (a) within the Naval Air Systems Command.

b. In accordance with procedures adopted by ASPAB in conjunction with the Navy, copies of patent applications filed in the Patent and Trademark Office (PTO) containing information falling within categories of subject

matter specified by the Naval Air Systems Command, or which are determined to obviously relate to the national security and to disclose information as to matters under the cognizance of the Command, are made available by the Commissioner of Patents for review by Command personnel. Copies of classified patent applications prepared by Department of Defense activities and contractors are made available for review in accordance with regulations and contract provisions. Likewise, applications of foreign origin determined by the foreign government to be classified are furnished for review in accordance with international agreements. Upon notification by the cognizant technical or security personnel of the Naval Air Systems Command that the information disclosed in a patent application could reasonably be expected to cause at least identifiable damage to the national security, the NAVAIR Patent Counsel acts to notify the Commissioner via the ASPAB to place a secrecy order on the application.

4. Policy

a. It is the policy of the Naval Air Systems Command to recommend that secrecy orders be placed (1) on all patent applications disclosing information classified on the authority of the Command and (2) on all patent applications disclosing information, the disclosure of which the Command determines would be detrimental to the national security.

b. The criteria for determining whether or not the disclosure of information other than "official information" would be detrimental to the national security are the same as those set forth in reference (c) for the determination of security classification with the exception that such information is not required to fall within the definition of "official information."

c. In view of the potential liability of the Command resulting from the imposition of secrecy orders on the recommendation of the Command, it is the policy of the Command to review the information disclosed in such applications on a continuing basis so as to recommend rescission of such secrecy orders as soon as the information disclosed therein has been declassified, or it is determined that the disclosure of such information would not be detrimental to the national security.

5. Responsibilities

a. Patent applications are made available for review by the Command in accordance with departmental procedures or in accordance with contract requirements. Patent Counsel (AIR-OOP) is responsible for maintaining records and files of applications furnished for review by the Command, for making them available to the cognizant technical code of the Command for review and for taking appropriate action to recommend imposition, modification and rescission of secrecy orders. Technical and security personnel of the Command are responsible for advising Patent Counsel as to whether or not applications disclose information which is classified or whether or not disclosure of the information in an application would be detrimental to the national security.

b. In order to minimize the potential liability of the Government, reference (a) requires that a secrecy order on a patent application be renewed annually, except in time of war or national emergency. This requires an affirmative determination at least annually that disclosure of the information in the application continues to be detrimental to the national security. Patent Counsel is responsible for surveillance of the records of applications under secrecy order by recommendation of the Command and in appropriate cases resubmitting such applications for further review by technical and security personnel. The latter are responsible for advising Patent Counsel of any change in classification of the application or whether or not the disclosure of the application would be detrimental to the national security.

c. Requests for modification or rescission of secrecy orders imposed on patent applications by recommendation of the Command are received by the Command Patent Counsel in accordance with departmental procedures. In appropriate cases, Patent Counsel will obtain the recommendations of Command technical and security personnel and take action on such requests accordingly. Modification of secrecy orders to permit the filing of corresponding foreign patent applications will be recommended only when the release of the information to the foreign government has been approved.

6. Action

a. Patent Counsel shall maintain records of patent applications under the cognizance of the Command and submit them for review by cognizant technical and security personnel.

b. Addressees shall assure prompt review by cognizant personnel of patent applications made available for review by Patent Counsel and recommend the appropriate military security classification or imposition, modification, or removal of secrecy orders in accordance with the needs of national security.

c. Security Division (AIR-960) shall, where appropriate, assign the proper military security classification to patent applications made available by Patent Counsel for review and advise Patent Counsel with respect to the modification or removal of secrecy orders from such patent applications in accordance with the requirements of national security.


C. J. KEMPF
Vice Commander

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